THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.8136 OF 2003

March , 2006.

Between:

Adoni Cotton Merchants Association,

17-104-7, Agricultural Market Yard Road,

Adoni, represented by its Secretary

K. Narayanappa and five others. .. Petitioners.

And
The State of Andhra Pradesh,

represented by its Secretary,

Food and Agriculture, Marketing Department,

Secretariat building, Hyderabad and another. .. Respondents.

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JUDGMENT:

The 1st petitioner is an Association of cotton merchants at Adoni and petitioners 2 to 6 are its members, who are carrying on their business in the market area of the agricultural market committee, Adoni. It is stated that all the members of the 1st respondent-Association were granted licences as traders by the 2nd respondent. This writ petition is filed questioning the notices issued to the petitioners 2 to 6 by the 2nd respondent-Agricultural Market Committee, calling upon them to pay market fee on the sale of cotton seed is arbitrary, illegal and contrary to the provisions of the A.P. Agricultural Produce and Livestock Markets Act, 1966 (for short "the Act"), apart

from being violative of the constitutional rights guaranteed under Articles 14, 19(1)(g) and 300-A of the Constitution of India.

The case of the petitioners, as stated in the affidavit filed in support of the Writ Petition, is as under:

Petitioners 2 to 6 have been purchasing cotton Kappas in Adoni Market Yard situated in the notified area of Adoni Agricultural Market Committee from the farmers who bring the said agricultural produce for sale. On purchases made by the petitioners 2 to 6 they pay market fee, and thereafter, they get the cotton kappas ginned in ginning mills located in the market area and then export to their agents located in other states, since there is no demand in the State of Andhra Pradesh. After sale, the agents concerned send the account of sale proceeds and the transaction is disclosed in the monthly accounts submitted by petitioners 2 to 6 to the 2nd respondent. The exports outside the market area within the State and places out side the State are made under export permits granted as contemplated under by-law 24(8) of the bye-laws of the 2nd respondent.

While so, the 2nd respondent issued impugned notices to the petitioners 2 to 6 calling upon them to pay market fee on the value of the turnover of cotton seed sold outside the State as well as within the State, but outside the market area of the 2nd respondent. The said notices were issued purportedly pursuant to the Judgment of this Court in W.P.No.23976 of 1996 and batch dated 27-9-2000.

The said notices are challenged in this writ petition contending, *inter laia,* that the 2nd respondent-market committee has no jurisdiction to levy and collect market fee on sales or purchases of cotton seed in the market yards situated in market areas of other market committees in the State. It is also contended that the Act has no application to the transactions that took place outside the State of Andhra Pradesh in view of Article 245 of the Constitution of India. Thus, the transactions, which took place outside the State of Andhra Pradesh, cannot be subject to levy of market fee under Section 12 of the Act. Their further contention is that since cotton seed suffered purchase fee as part of cotton kappas, no further market fee can be levied on sale or purchase of cotton seed. Hence, this writ petition.

In the counter-affidavit filed on behalf of the 2nd respondent-market committee, it is

stated that the petitioners had submitted their accounts for assessment and levy of market fees on cotton seed since 1998-99 onwards. The market committee issued demand notices on the basis of permit accounts on sale of cotton seed as submitted by the petitioners in their permit book account. It is further stated that even as per the permit account produced before the 2nd respondent, it is clear that the transaction took place within the notified area of agricultural market committee, Adoni and cotton seeds were transported to various places outside the State and also within the State by using permits issued by the 2nd respondent-market committee. As such, the 2nd respondent is entitled to demand market fee as per Section 12(2) of the Act. It is further stated that the Act applies to sales and purchases effected within the State and in case sales are effected within the notified market area even though the transaction took place outside the State, market fee shall be levied under Section 12 of the Act. Hence, the impugned demand notices are in accordance with law and the writ petition is liable to be dismissed.

I have heard the learned counsel for both the parties and perused the material on record.

Section 3(3) of the Act empowers the Government to publish a notification declaring the area to be a notified area for the purposes of the Act in respect of any agricultural produce, livestock and products of livestock. In exercise of the said powers, G.O.Ms.No.2095 dated 29.10.1968 was issued declaring the notified areas as well as agricultural produces. Schedule II to the said notification specifies the agricultural produce in different groups. It is not in dispute that in Schedule II includes cotton kappas at Sl.No.25 and cotton seed has been included at Sl.No.38.

In **Narayana Rao & Sons v. Govt. of A.P.**, a Division Bench of this Court while reiterating that cotton seeds and cotton kappas are two independent items and that cotton seeds are liable to levy of market fee, further observed that it is always open to the petitioners therein to rebut the presumption that there is sale or purchase of cotton seeds within the notified market area for the purpose of Section 12 of the Act and satisfy the market authorities that in fact sale or purchase took place outside the market area and that on the sale or purchase of cotton seeds, market fee was already paid to other Market Committees.

In **ITC Zeneca Limited, Secunderabad v. Government of A.P.** having considered the question with regard to exigibility of market fee on the sale of seeds

which are not edible and meant for germination under the provisions of the A.P. (Agricultural Produce and Livestock) Markets Act, 1966, a Division Bench of this Court held that once the agricultural produce, horticultural produce or forest produce are notified, gazetted and form part of Schedule II, it does not matter as to whether the said produce is edible or not. It was also held that if the product is sold in its original form, the same has to be taken as it is for the purpose of levy of market fee and if the derivative of the said original product is sold separately, then the said derivative is also exigible to market fee. The Division Bench further clarified that the seeds which are derivatives of the main produce, but are sold separately and which are not specified in Schedule II cannot be made liable to the levy and collection of market fee.

In the light of the above decision of the Division Bench, and since admittedly both cotton kappas and cotton seeds are included in Schedule II to the notification under the Act at Sl.Nos.25 and 38 respectively, there can be no dispute about the fact that market fee is leviable on sale or purchase of both cotton kappas and cotton seeds.

However, the petitioners in the present case contended that since cotton seed was sold outside the notified area of Adoni, the provisions of the Act are not attracted, and therefore, the impugned notices are arbitrary and illegal. It is the case of the petitioners that they export most of the product of cotton seeds outside the State through their agents located in other States. A perusal of the impugned notices shows that the said notices were issued on the basis of the export returns submitted by the petitioners enclosing copies of export permits. The petitioners contended that it is evident from the said export permits that cotton seed was sold outside the notified area of Adoni Market Committee outside the State.

The law is well-settled that if market fees is collected by a market committee within the State of Andhra Pradesh, it cannot be collected by another Market Committee, if proof of such payment is furnished. (vide **Kurnool district Rice Millers Association v. Agricultural Market committee** (1998 (3) ALD 167).

In the case on hand, whether the cotton seed was sold by the petitioners within the notified market area and whether the same was already subjected to market fee is a pure question of fact, which has to be decided on the basis of the material that may be produced by the traders. Under sub-section (2) of Section 12 of

the Act, though market fee shall be paid by the purchaser on the notified agricultural produce, as per the proviso, where the purchaser cannot be identified, fee shall be paid by the seller. Hence, as rightly contended by the learned counsel for the petitioners the trader must be afforded an opportunity to rebut the presumption that can be drawn under Explanation I to Section 12(1) of the Act.

It is also clear from a reading of sub-section (1) of Section 12-B of the Act that on the basis of the returns submitted by the trader, assessment has to be made and only on the basis of such assessment a demand can be issued levying the market fee. This is clear from the wording of Section 12-E of the Act, which provides for a remedy of appeal against an order of assessment.

In the circumstances, I am not inclined to express any opinion as to the claim of the petitioners that since they have exported cotton seeds to other States, sale took place outside the notified market area and thus the provisions of the Act are not applicable. As expressed above, it is a pure question of fact which has to be decided after affording due opportunity to the trader to produce the relevant material in support of his claim.

It is relevant to note that in the case on hand, while directing *Rule nisi*, this Court granted interim stay on payment of 50% of the amount demanded under the impugned notices and it is not in dispute that the petitioners have complied with the same.

In the circumstances, the impugned demands are set aside and the 2nd respondent-market committee is directed to pass orders of assessment on the basis of the returns submitted by the petitioners 2 to 6. In case the petitioners are aggrieved by such assessment that may be made, it is open to them to work out appropriate remedy as available under law.

The writ petition is accordingly, disposed of. No costs.

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(G. ROHINI)

April 25, 2006.

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